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SUBJECT: Commercial Space Launch Agreement Talks Launched

¶1. (SBU) Summary: Assistant U.S. Trade Representative (USTR) for Services and Investment Christine Bliss and Indian Space Research Organization (ISRO) Scientific Secretary A. Bhaskraranarayana led the first round of bilateral Commercial Space Launch Agreement (CSLA) negotiations October 27-28 in Bangalore. ISRO was keen to be able to launch U.S. commercial satellites, but expected its nascent system to be afforded flexibility with respect to the market principles outlined in the CSLA. ISRO opposed language in the draft CSLA text on distorting competition, transparency, and improper business practices, but agreed to propose some alternate wording after Bliss made clear that the USG would not allow commercial satellites to be licensed in the same way as non-commercial satellites. USTR and ISRO have now scheduled a digital videoconference for December 8 to continue these talks. ISRO showed less flexibility in discussing satellite services, placing more emphasis on its responsibility to consumers than to foreign operators. End Summary.

¶2. (U) Other USG delegation members included: Claudio Lilienfeld, Deputy Assistant USTR for South and Central Asia; Catherine Hinckley, USTR Director of Telecommunications and E-Commerce Trade Policy; Steven W. Lett, Deputy United States Coordinator, International Communications and Information Policy, DOS; Joe Burton, Counselor for Technology and Security Policy, DOS; John Sloan, Space Policy Analyst, Federal Aviation Administration; Nicole Weber, First Secretary, U.S. Embassy, New Delhi; and Scott Woodard, Economic/Political Officer, U.S. Consulate Chennai. Other GOI delegation members included: K.R. Sridharamurthi, Managing Director, Antrix Corporation; S.B. Iyer, Consultant; D.R. Suma, Director Launch Vehicle Program; T.S. Shoba, Director, Technology and Services, Antrix; D. Radhakrishnan, Deputy Director, Launch Vehicle Program Office; V. Gopalakrishnan, Policy Analyst; D. Gowrisankar, Deputy Director, International Cooperation; Randhir Jaiswal, Deputy Secretary (Americas Division), Ministry of External Affairs (MEA); and Shri Vipul, Deputy Secretary, Disarmament and International Security Division, MEA.

ISRO Keen on Launching U.S. Satellites...

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¶3. (SBU) Bhaskraranarayana explained that the Technology Safeguards Agreement signed in July was the first step toward ISRO's goal of being able to launch U.S. commercial satellites, indicating that the CSLA talks are as important to ISRO as to the USG. AUSTR Bliss acknowledged that many U.S. companies would like to have the option

of Indian launch vehicles and the USG goal is to balance this desire with the continued healthy growth of U.S. domestic launch industry--to ensure that U.S. companies can compete on a level playing field. Bhaskaranarayana said ISRO's system is nascent, with less than one percent of the potential market, and should therefore be afforded flexibility with respect to the market principles outlined in the CSLA. Bliss asked him to clarify if both the "PSLV" launch vehicle, which is bidding for international projects and has an established track record, and the "GSLV," which has had only a few trial launches and is not yet in a position to attract international interest, are both nascent and in need of flexibility. But ISRO did not provide a clear response. (Note: ISRO--through its wholly-owned commercial arm Antrix--has international launch service customers from Argentina, Belgium, Germany, Indonesia, Israel, Italy, and South Korea.)

14. (SBU) Sridharamurthi explained Antrix's approach to pricing, saying it sticks to its principles even while others--Russia in particular--are artificially under-pricing. He said that for India, artificially low prices for some customers would create problems since all customers would expect the same treatment and, thus, the business would not be viable. So, Antrix charges cost plus a margin to fund Antrix's marketing and management costs. To address risk, Antrix and its customers use all available options depending on what is available (or amenable to the customer), including commercial insurance, self-insurance, and a re-launch guarantee. Sridharamurthi noted that the cost associated with a re-launch guarantee is built into the launch price, adding that U.S. company SpaceX uses this same practice. He maintained that Antrix is compelled to offer a re-launch guarantee because private insurance is not necessarily available.

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...But Opposed to Competition, Transparency,  
and Corruption Provisions

15. (SBU) ISRO was very opposed to language in the draft CSLA text on distorting competition, transparency, and improper business practices. Sridharamurthi said ISRO/Antrix never understood U.S. intentions behind the agreement, saying "we would rather not do business than create a system that is not sustainable." DAUSTR Lilienfeld and other U.S. delegation members explained several times that the U.S. intention is to ensure that both countries adhere to the same set of principles in the commercial launch market, especially looking to the future when India would be a bigger player. Sridharamurthi stressed that ISRO could only accept global principles. He and Bhaskaranarayana said they could not understand why their nascent industry would have to adhere to such principles. Bliss made clear that the USG would not allow commercial satellites to be licensed in the same way as non-commercial satellites, indicating that commercial satellites licenses would either be allowed through the completion of a CSLA or after a substantial period of time has passed to allow the USG to evaluate ISRO's pricing practices and determine that they do not create market distortions.

16. (SBU) Bhaskaranarayana said the language on improper business practices makes it look like the USG suspects ISRO of inappropriate actions, stressing that there is no place in a government-to-government agreement for language on business conduct. He asserted that ISRO is prohibited by law from the mentioned practices (e.g., providing distorting subsidies, inducements, or additional services below prevailing rates), so there is no reason to include their mention in the text. The U.S. side pointed out repeatedly that bilateral agreements in the trade arena all include language on precluding improper practices, and that such language is reciprocal in nature and not intended to imply that malfeasance is occurring. The U.S. side did agree to consider revising and making more specific the scope of both the definition of improper business practices and inducements. The ISRO side agreed to suggest some alternate language. (Note: USTR and ISRO have scheduled a digital videoconference for December 8 to continue these talks.)

Satellite Services Discussions Less Productive

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¶7. (SBU) AUSTR Bliss explained that opening up the satellite services sector would generate much faster growth. Hinckley stressed the need for greater transparency in the rules governing which foreign satellite capacity can be accessed directly by users (such as telecom operators, video content providers, direct-to-home operators, etc.) in India and which satellite capacity needs to be contracted through ISRO. (Note: Bhaskraranarayana refused to include remote sensing in the satellite services discussion, saying it is a different issue because it encompasses the sale of imaging rather than the sale of capacity.) ISRO staff clarified that all C-band capacity (mainly used for distribution of cable programming and for telecommunications applications) can be contracted directly with foreign satellites, as long as it has been coordinated with the Indian National Satellite System (INSAT). Ku-band capacity (mainly used for Direct to Home (DTH) and Very Small Aperture Terminal (VSAT) applications) must be contracted through ISRO, pursuant to a 2001 Space Policy which is classified by India as "Secret." The ISRO side agreed to provide the USG with a redacted version of this policy.

¶8. (SBU) USTR raised the issue of contract durations for foreign satellite capacity, and ISRO claimed that the foreign operators are the ones limiting the contract terms to a few years and that ISRO had to make sure the capacity would be available long term. USTR stressed that foreign operators are not able to properly plan because they have no regulatory certainty that they will be able to sell the capacity after they make the investment. ISRO was very insistent in asking what USTR defines as a U.S. company. Bliss stated that USTR took a broad view of what is a U.S. company for trade purposes, but indicated USTR's goal was not simply to advocate on behalf of satellite operators, as there were many other U.S. companies interested in having direct access to satellites in India. The ISRO side said more than once that the

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Indian private sector can access all of the capacity it needs through ISRO, implying that there was no need to tamper with what it considers to be a finely tuned system.

Comment

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¶9. (SBU) Bhaskraranarayana opened the CSLA talks on a very positive note and expressed optimism about what could be achieved, but appeared a bit frustrated once he realized it would not be an easy process. He vociferously objected to the USG need to mention improper business practices and transparency in the agreement, stating that it was "unseemly" and would create a stigma for ISRO. India is ranked 84 out of 180 (180 being most corrupt) on Transparency International's 2009 Corruption Perceptions Index, so the need to mention such practices should not come as such a surprise. While the USG side knew the CSLA talks would be a challenge, negotiators were pleasantly surprised by ISRO's indication of some flexibility on elements of the draft text. ISRO showed less flexibility in discussing satellite services, dismissing the idea that freer access for India's private sector to such services might have value and instead placing more emphasis on its responsibility to consumers. No timeline was set for the next satellite services discussion.

¶10. (U) USTR's Hinckley and Lilienfeld cleared this cable.

Roemer